

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

**JERRY BLANEY,**

Petitioner,

v.

**NATHANIEL QUARTERMAN, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Division,**

Respondent.

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Civil Action No. **3:08-CV-1382-L**

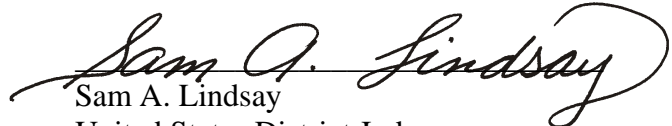
**ORDER**

Before the court is Blaney's Application for Writ of Habeas Corpus, filed August 8, 2008. Pursuant to Special Order 3-251, the petition was referred to United States Magistrate Judge Jeff Kaplan, on August 8, 2008. On October 17, 2008, the Findings, Conclusions, and Recommendation of the United States Magistrate Judge ("Report") was filed. Petitioner filed objections to the Report on October 27, 2008.

This is a habeas petition filed pursuant to 28 U.S.C. § 2254. The magistrate judge found that Petitioner has not exhausted his state remedies because the appeal of his conviction is pending. Plaintiff objects to the magistrate judge's finding because he believes that he exhausted his state remedies by filing a state petition for writ of mandamus. Petitioner also requests that the magistrate judge recuse himself because he treated Petitioner's petition as a posttrial petition rather than a pretrial petition. There is no distinction in the exhaustion requirement for pretrial and posttrial habeas petitions. The magistrate judge used the proper exhaustion analysis. Therefore, the court **overrules** Petitioner's objection and **denies** his request to for the recusal of the magistrate judge.

Having reviewed the Petition, file, record, and the Report in this case, the court determines that the findings and conclusions are correct. The magistrate judge's findings and conclusions are therefore **accepted** as those of the court. Accordingly, the court **dismisses without prejudice** the writ of habeas corpus.

**It is so ordered** this 30th day of October, 2008.

  
Sam A. Lindsay  
United States District Judge